

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELECTRONICALLY FILED

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ENERGY BRANDS INC. d/b/a GLACÉAU,	:	
	:	
Plaintiff,	:	
	:	08 Civ. 4909 (JSR)
v.	:	
	:	
NATIONAL BEVERAGE CORP.,	:	
	:	
Defendant.	:	
----- X		

NOTICE OF DEFENDANT’S MOTION TO DISMISS, STAY OR TRANSFER

Defendant National Beverage Corp., by and through undersigned counsel, and pursuant to Rule 2(d), Individual Rules of Practice of this Court, hereby files this Notice of Motion. Defendant has sought, and the Court has granted, leave to file a Motion to Dismiss, Stay or Transfer this action (the “Motion”). Defendant shall move this Court to dismiss this action or, in the alternative, stay this action pending resolution of *National Beverage Corp. v. Energy Brands, Inc. d/b/a Glaceau*, Case No. 08-cv-60792, S.D. Fla., or transfer this action to the Southern District of Florida. The schedule for service and filing of papers, set by the Court at the July 31, 2008 Scheduling Conference, is as follows:

August 7, 2008 – Defendant’s Motion to Dismiss, Stay or Transfer and Memorandum of Law in Support of the Motion

August 18, 2008 – Plaintiff’s Memorandum of Law in Opposition to the Motion

August 22, 2008 – Defendant’s Reply to Plaintiff’s Opposition

The Court has set Oral Argument on the Motion for August 27, 2008 at 2 p.m.

Dated: Miami, Florida
August 4, 2008

Respectfully submitted,

LOTT & FRIEDLAND, P.A.

By: s/ Leslie J. Lott

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*Attorneys for Defendant,
National Beverage Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on the referenced date, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the following Service List in the Manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Leslie J. Lott

Leslie J. Lott

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Service via CM/ECF